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March 27, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
Room 222  
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Washington, D.C. 20554

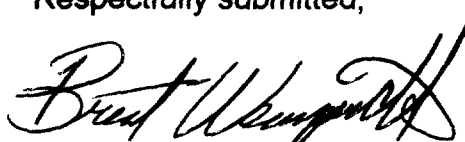
**RE: Partial Opposition of Motorola, Inc. to COMSAT's Motion for  
Leave to File Supplemental Comments in ET Docket 95-18**

Dear Mr. Caton:

Enclosed please find for filing on behalf of Motorola, Inc. an original and five (5) copies of its Partial Opposition to COMSAT's Motion for Leave to File Supplemental Comments in ET Docket 95-18. I request that this pleading be placed in this open rule making docket.

Please date stamp and return our copy marked "Duplicate Original" to the messenger. If there are any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,



Brent H. Weingardt  
Counsel for Motorola, Inc.

Enclosure

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**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**MAR 27 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

**Amendment of Section 2.106 of  
the Commission's Rules to  
Allocate Spectrum at 2 GHz for  
Use by the Mobile-Satellite  
Service**

**ET Docket No. 95-18  
RM-7927**

**PARTIAL OPPOSITION OF MOTOROLA TO COMSAT'S MOTION FOR  
LEAVE TO FILE SUPPLEMENTAL COMMENTS**

Motorola, Inc. ("Motorola") opposes in part COMSAT Corporation's Motion to File Supplemental Comments in the above-captioned proceeding.<sup>1/</sup> The Commission should not consider the substance or merits of COMSAT's proposal unless all parties are given sufficient time to analyze the ramifications of COMSAT's band-clearing alternative.

If the Commission concludes that a supplemental pleading cycle premised upon COMSAT's views is appropriate, this pleading cycle cannot take the place of a revised FCC proposal. The Commission must follow this supplemental pleading cycle with a Further Notice of Proposed Rulemaking if it concludes that new

<sup>1/</sup> Motion of COMSAT Corporation For Leave To File Supplemental Comments, March 14, 1996. Included with the motion are proposed "Supplemental Comments of COMSAT Corporation ("COMSAT Supplemental Comments"). Motorola is not commenting on the merits of COMSAT's proposed comments at this time. However, it reserves the right to do so if the Commission acts favorably on COMSAT's motion.

facts warrant changes to its original band clearing proposal. If COMSAT's views on the ramifications of WRC-95 are adopted by the Commission, this would fundamentally alter the premises behind the Commission's current BAS/FS relocation plan and require a significant change. This change cannot be accomplished without further public notice.

Motorola strongly supports the allocation of additional spectrum for global MSS. As Motorola has previously stated, current MSS allocations in the United States are insufficient to meet the current and future demands for global MSS.<sup>2/</sup> The record established to date in this proceeding and in preparation for WRC-95 justifies the allocation of at least 70 MHz of additional MSS spectrum for use on a global basis.<sup>3/</sup> However, the issues associated with the cost and timing of clearing incumbent BAS and FS licensees from the 2 GHz bands are complex. These issues should be reviewed by the FCC not solely in the context of COMSAT's latest technical claims, but in a process that includes a further rulemaking cycle if the facts warrant.

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<sup>2/</sup> See, e.g., Motorola Initial Comments of May 5, 1995 at 6-9; Motorola Reply Comments of June 21, 1995 at 7-10.

<sup>3/</sup> For example, the IRIDIUM® System is licensed to operate in less than one-half of the L-band spectrum that Motorola originally sought from the Commission. Motorola Satellite Communications, Inc., Order and Authorization, 10 FCC Rcd. 2268 (Int'l. Bureau 1995).

**I. COMSAT'S PROPOSALS FUNDAMENTALLY ALTER THE COMMISSION'S PROPOSED BAND-CLEARING PROCEDURES AND WOULD REQUIRE A SUPPLEMENTAL NOTICE**

COMSAT proposes a gradual transition plan for moving BAS and FS incumbent licensees out of the 2 GHz bands.<sup>4/</sup> Other than its interpretation of WRC-95's Resolution Com 5-10, COMSAT provides no additional technical evidence as to the ability of operational MSS systems to share downlinks with FS systems on a co-frequency basis. Without more, the Commission must be wary of proceeding down a technically unproven sharing path.<sup>5/</sup>

The COMSAT band clearing proposal also reflects fundamental changes to the Commission's proposed plan for involuntary relocation of incumbents. Indeed, COMSAT itself recognizes this fact:

COMSAT believes that the results of WRC-95 fundamentally alter the assumptions underlying the Commission's proposals in the NPRM regarding the deployment of MSS at 2 GHz and the relocation and reimbursement of existing terrestrial operations in the 2 GHz band in the United States.<sup>6/</sup>

If the Commission ultimately concludes that its microwave relocation plan and compensation scheme for BAS/FS incumbents should be revised due to the decisions reached at WRC-95, it must issue a Further Notice of Proposed Rulemaking

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<sup>4/</sup> COMSAT Supplemental Comments at 11-19.

<sup>5/</sup> See Motorola Reply Comments at 18-20.

<sup>6/</sup> COMSAT Motion at 2.

to allow interested parties an opportunity to comment upon these proposed changes.<sup>77</sup>

Otherwise, its final rules in this proceeding may be subject to legal challenge due to inadequate public notice and opportunity to comment.<sup>78</sup>

Moreover, Motorola believes that it is inappropriate to rethink such basic issues solely in the context of COMSAT's proposed supplemental comments. In such a process, the parties would have to comment on COMSAT's technical assertions, assertions that are at the core of any FS/MSS sharing arrangement, rather than focusing upon the Commission's proposals. An additional rulemaking would still be necessary to implement any changes to the FCC's currently proposed involuntary relocation policies.

Rather than only authorizing a limited supplemental pleading cycle, Motorola urges the Commission to follow this cycle with a Further Notice of Proposed

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<sup>77</sup> Specifically, the Commission should rethink its involuntary relocation and compensation procedures set forth in the Notice. Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, Notice of Proposed Rule Making, 10 FCC Rcd 3230, 3232 (1995). The Commission could also use the further notice to revise any other proposals it perceives as necessary in the wake of WRC-95.

<sup>78</sup> "We have repeatedly held, however, that each interested party is not required to monitor the comments filed by all others in order to get notice of the agency's proposal; hence the comments received do not cure the inadequacy of the notice given. MCI Telecommunications Corp. v. FCC, 57 F.3d 1136, 1142 (D.C. Cir. 1995); citing American Federation of Labor v. Donovan, 757 F.2d 330, 340 (D.C. Cir. 1985) ('[an agency] must *itself* provide notice of a regulatory proposal. Having failed to do so, it cannot bootstrap notice from a comment. '); Small Refiners Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 550 (D.C. Cir. 1983) ('Nothing in the text or legislative history of the [APA] hints that Congress intended to require private parties to scrutinize the record for notice of issues that the agency did not raise itself.')

Rule Making if it believes that the outcome of WRC-95 requires fundamental changes to its proposals.

## **II. THE COMMISSION SHOULD ESTABLISH A SUFFICIENT RESPONSE PERIOD TO REPLY TO COMSAT'S PROPOSAL**

If the Commission concludes that it wishes to seek public comment on the COMSAT proposals before issuing a Further Notice of Proposed Rule Making, it should allow the parties to this proceeding sufficient time to formulate adequate responses.

Motorola will need to devote additional technical resources to respond to COMSAT's proposal if the Commission deems it worthy of another pleading round. Fundamental fairness requires that all interested parties be given enough time to analyze this alternative.<sup>¶</sup> Moreover, the Commission will be better served by permitting commenters the needed time to provide well-documented responses.

## **III. CONCLUSION**

Motorola opposes in part COMSAT's Motion to File Supplemental Comments. If the Commission believes that the outcome of WRC-95 justifies a fundamental rethinking of its proposed BAS/FS relocation policy, it should initiate a new comment process that might begin with COMSAT's pleading but must include a Further

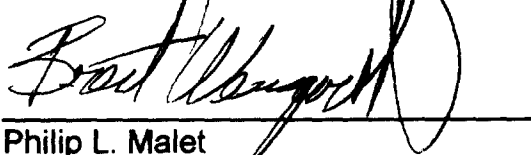
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<sup>¶</sup> Motorola believes it will require approximately 120 days to formulate a reply.

Notice of Proposed Rulemaking that reflects any proposed changes to the currently proposed BAS/FS relocation plan. If the Commission decides to take this course, it should provide sufficient time for all parties to prepare responses to the COMSAT filing.

Respectfully submitted,

**MOTOROLA SATELLITE  
COMMUNICATIONS, INC.**

A handwritten signature in black ink, appearing to read "Philip L. Malet", is written over a horizontal line.

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March 27, 1996

## **CERTIFICATE OF SERVICE**

I, Brent H. Weingardt, hereby certify that the foregoing **"Partial Opposition Of Motorola To COMSAT's Motion For Leave To File Supplemental Comments"** was served by hand delivery or first-class mail, postage prepaid, this 27th day of March, 1996 on the following persons:

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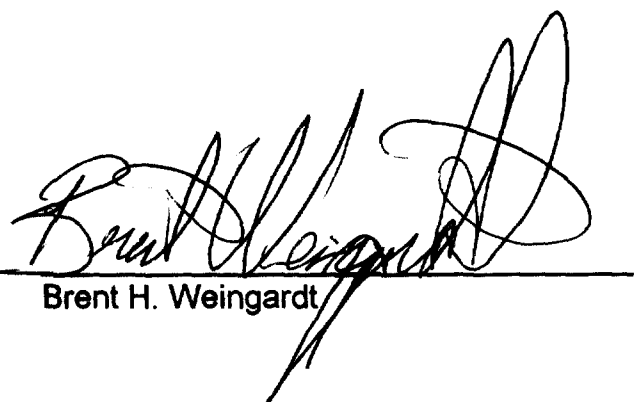
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